

CALCUTTA HIGH COURT

Reliance Jute Mills Co Ltd

Vs

Commissioner of Income Tax

(Sankar Prasad Mitra, J.)

25.03.1971

JUDGEMENT

Sankar Prasad Mitra, J

(1.) THIS is a reference under s. 66(1) of the Indian IT Act, 1922. The statement of the case relates to the asst. yr. 1960-61. The relevant accounting period is the financial year ending March 31, 1960. The assessee is a company which has been carrying on business, inter alia, in the manufacture of jute goods. The assessee's business income was finally determined by the Tribunal's order of October 27, 1964, at Rs. 23,93,166. While giving effect to the Tribunal's order the ITO set-off the unabsorbed losses of 1956-57 and 1957-58 of Rs. 3,24,849 and Rs. 20,68,317, respectively against the aforesaid business income.

(2.) TO the AAC the assessee pointed out that the total loss determined for the asst. yr. 1956-57 was Rs. 10,54,686 and not Rs. 3,24,849 as taken by the ITO. The AAC, after verifying the figures, directed the ITO to modify the assessment and the ITO did so accordingly. The next point raised before the AAC was regarding the set-off of losses. On behalf of the assessee it was submitted that, in the asst. yr. 1950-51, the total loss was Rs. 21,21,141, out of which in the assessment order dated April 26, 1960, for the asst. yr. 1959-60, the ITO had set-off unabsorbed loss of Rs. 1,58,845 for 1949-50 and Rs. 5,70,952 for 1950-51 against the business income of that year. It was urged that in this order the ITO had directed that the balance of unabsorbed loss for 1950-51 amounting to Rs. 15,50,187 should be carried forward for the subsequent year. On the basis of the said order, which, according to the assessee, had become final, these losses which have been directed to be carried forward by the ITO in respect of the asst. yr. 1950-51 should also have been set-off against the current year's business income. The AAC held that the losses could not be carried forward for more than 8 years. Before we proceed any further it would be convenient to set out some of the provisions of the relevant statutes. Sec. 24(2) of the Indian IT Act, 1922, prior to its amendment by the Finance Act of 1955, was as follows : "(2) Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, in any business, profession or vocation, and the loss cannot be wholly set-off under sub-s. (1), so much of the loss as is not so set-off or the whole loss where the assessee had no other head of income

shall be carried forward to the following year and set-off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year ; and if it cannot be wholly so set-off, the amount of loss not so set-off shall be carried forward to the following year, and so on, but no loss shall be so carried forward for more than six years, and a loss arising in the previous years for the assessment for the year ending on the 31st day of March, 1940, the 31st day of March, 1941, the 31st day of March, 1942, the 31st day of March, 1943 and the 31st day of March, 1944, respectively, shall be carried forward only for one, two, three, four and five years, respectively." Later on, the following amendment was made in the aforesaid sub-section by s. 16 of the Finance Act, 1955 : "16. Amendment of s. 24, Act XI of 1922.--In sub-s. (2) of s. 24 of the IT Act,- (1) for the words beginning with 'where any assessee sustains a loss of profits' and ending with 'three, four and five years, respectively', the following shall be substituted, namely :-- 'Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, in any business, profession or vocation, and the loss cannot be wholly set-off under sub-s. (1), so much of the loss as is not so set-off or the whole loss where the assessee had no other head of income shall be carried forward to the following year, and (i) where the loss was sustained by him in a business consisting of speculative transactions, it shall be set-off only against the profits and gains, if any, of any business in speculative transactions carried on by him in that year ; (ii) where the loss was sustained by him in any other business, profession or vocation, it shall be set-off against the profits and gains, if any, of any business, profession or vocation carried on by him in that year : provided that the business, profession or vocation in which the loss was originally sustained continued to be carried on by him in that year ; and (iii) if the loss in either case cannot be wholly so set-off, the amount of loss not so set-off shall be carried forward to the following year and so on : (2) after cl. (e) of the proviso, the following clause shall be inserted, namely : '(f) a loss arising in the previous years for the assessment for the years ending on the 31st day of March of the years 1940, 1941, 1942, 1943 and 1944 shall be carried forward for one, two, three, four and five years respectively, and a loss arising in the previous years for the assessment for the years ending on the 31st day of March of the years 1945, 1946, 1947, 1948 and 1949 shall be carried forward for six years, and such loss shall be set-off only against the profits and gains, if any, of the assessee from the same business, profession or vocation'." Yet another amendment came to s. 24(2)(iii) as per Finance Act, 1957,[Finance (No. 2) Act, 1957] which reads as follows : "8. Amendment of s. 24.--In s. 24 of the IT Act,-- (a) in cl. (iii) of sub-s. (2), after the words 'following year and so on', the words 'but no loss shall be so carried forward for more than eight years' shall be inserted."

(3.) IN this case, before the Tribunal, it was submitted that by reason of the change introduced in s. 24(2) of the IT Act by the Finance Act of 1955, the loss suffered in any year could be carried forward indefinitely subject to the restrictions in proviso (f). It was urged that loss in the years from 1949-50 onwards could be carried forward indefinitely whereas the loss sustained in the earlier years could only be carried forward for a specific number of years. According to the assessee's submissions, a right which had vested in the taxpayer to carry forward loss sustained in 1949-50 and subsequent years without any period of limitation under the Finance Act, 1955, must be held to subsist unless there was a specific provision in the later amendment withdrawing such privilege ; and even if the amendment in 1957 which stipulated loss to be carried forward only for a period of 8 years, the loss sustained from 1949-50 onwards could be carried forward

indefinitely without any restriction to the period to which it might be carried forward. It was urged that the ITO's order for 1959-60 directing the said loss for 1950-51 to be carried forward for subsequent years had become final and the subsequent ITO had no option but to give effect to the previous order and, as such, the sum of Rs. 15,50,189 for the asst. yr. 1950-51 should have been set-off against the profits from the net amount determined in the present appeal. The Tribunal considered the above provisions of s. 24(2) of the IT Act prior to its amendment by the Finance Act, 1955, as also the subsequent amendments made from time to time. The Tribunal was of opinion that the facts in the present case were governed by the provisions of the IT Act prior to its amendment by the Finance Act, 1955. The Tribunal did not agree with the assessee's submissions that a right had accrued to the assessee to carry forward and set-off the loss for an unlimited period by the Act of 1955. The Tribunal has stated that the legislature had the right to amend the law and in the absence of any express direction to the effect that the amendment was meant to have retrospective effect, the law had to be interpreted as it stood at the relevant period and no other meaning than what was clearly apparent from the plain reading of the Act itself could be imported. The Tribunal held that the Finance Act, 1957, which restricted the assessee's right to carry forward losses for not more than 8 years, was valid and supported the decision of the authorities below who had refused to set-off the unabsorbed losses sustained in 1950-51 against the assessee's business income for the asst. yr. 1960-61. ;